

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE OF PENNSYLVANIA

UNITED STATES OF AMERICA )  
 )  
 ) No. 19-cr-140-CFC  
 v. )  
 )  
 KEITH THOMAS DOUGHERTY )  
 )  
 Defendant. )

Thursday, March 24, 2022  
12:03 p.m.  
Sentencing

844 King Street  
Wilmington, Delaware

BEFORE: THE HONORABLE COLM F. CONNOLLY  
United States District Court Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE  
BY: DAVID PERRI, ESQ.

Counsel for the Government

BY: KEITH THOMAS DOUGHERTY, pro se

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P R O C E E D I N G S

(Proceedings commenced in the courtroom beginning at 12:03 p.m.)

**THE COURT:** All right. Good afternoon. Please be seated.

So Counsel and Mr. Dougherty, this is the time the Court has set aside for sentencing in the case of United States against Keith Thomas Dougherty, and it's Criminal Action Number 19-140, right?

So first of all, before we get started with the sentencing, there is outstanding, right now, the defendant's motion titled Combination Rule 29 and 33, as well a Federal Rule of Civil Procedure Partial Summary Judgment Motion, unquote. That's DI234.

I have written a short order that will be entered right after this hearing. I'm going to read, summarize it, really, into the record, just for the parties' benefit.

So the defendant brought this motion having been found guilty by a jury of one count of mailing threatening communications in violation of 18 U.S.C. Section 876(c) and two counts of interstate communications with threatening to injure in violation of 18 U.S.C. Section 875(c).

1           As this is a criminal case, and because Mr.  
2           Dougherty is an incarcerated pro se defendant, with  
3           apparently limited access to a computer, I will treat the  
4           motion as a timely filed motion for judgment of acquittal  
5           under Federal Rule of Criminal Procedure 29 and for a new  
6           trial under Federal Rule of Criminal Procedure 33.

7           Rule 29 provides that the Court on the  
8           defendant's motion must enter a judgment of acquittal of  
9           any offense for which the evidence is insufficient to  
10          sustain a conviction.

11          In ruling on such a motion, the District Court  
12          must review the record in the light most favorable to the  
13          prosecution to determine whether any rational trier of  
14          fact could have found proof of guilt beyond a reasonable  
15          doubt based on the available evidence.

16          That proposition is supported by Third Circuit  
17          case titled *United States against Smith* found at 294 F.3d  
18          473, specifically at Page 476.

19          Rule 33 provides that a court may vacate any  
20          judgment and grant a new trial if the interest of justice  
21          so requires. A District Court can order a new trial only  
22          if it believes that there is a serious danger that a  
23          miscarriage of justice has occurred; that is, that an  
24          innocent person has been convicted.

25          That proposition of law can be found in the

1     *United States against Johnson*, a Third Circuit case, that  
2     is found at 302 F.3d 139 at Page 150.

3             Like dozens of other motions that he has filed  
4     in this case, Dougherty's pending motion is difficult to  
5     decipher. As best I can tell, he makes two arguments in  
6     support of the motion. He argues, first, that the  
7     Government presented, and I quote here, no evidence  
8     required under the *Elonis* subjective intent element of the  
9     crime that the communication was transmitted as a threat  
10    to any person, unquote. That's found at Page 7 of the  
11    motion.

12            I assume that Dougherty is referring here to  
13    *Elonis against United States*, a Supreme Court case found  
14    at 575 U.S. 723. The Court held in *Elonis* that the mental  
15    requirement for Section 875(c) is satisfied if the  
16    defendant, quote here, transmits a communication for the  
17    purpose of issuing a threat or with knowledge that the  
18    communication will be viewed as a threat, unquote. That's  
19    at Page 740.

20            Although *Elonis* addressed Section 875(c), the  
21    language of Section 876(c) tracks in relevant part Section  
22    875(c).

23            So for instance, at 875(c), the statute reads:  
24    Whoever transmits in interstate or foreign commerce any  
25    communication containing any threat to injure the person

1 of another shall be fined or punished under statute.

2 Similarly, if one looks at 876(c), you will  
3 find the following language, and I have some ellipses in  
4 here. But it reads in relevant part: Whoever knowingly  
5 deposits in the mail or causes to be delivered any  
6 communication addressed to any other person, and  
7 containing any threat to injure the person of the  
8 addressee. So basically the statutes parallel each other.

9 Consistent with *Elonis's* holding, I instructed  
10 the jury that an essential element of each count was that,  
11 and I quote, the defendant either intended the  
12 communication to be a threat or had knowledge that it  
13 would be viewed as a threat, unquote. Those are jury  
14 instructions four and five.

15 Dougherty's May 6, 2017 letter, and Chief Judge  
16 Conners' testimony about that letter, provided ample  
17 evidence to support the jury's finding that this element  
18 was satisfied.

19 Dougherty seems to believe that to meet this  
20 element, the alleged threatening communication must have  
21 been made directly to the threatened person, but he is  
22 mistaken. Nothing in the language of either 875(c) or  
23 876(c) requires that the threat be made directly to the  
24 intended target. Instead, the statute simply prohibit,  
25 and I quote, any threat to injure the person, unquote, or

1 another.

2 And I would point the parties to *United States*  
3 *against Stoner*. It's a Third Circuit opinion from 2019,  
4 found at 781F at App'x at 81, but it's at footnote six.  
5 And there the Court wrote, quote, the language of Section  
6 875(c) does not require that the threat be made directly  
7 to the intended target. It simply prohibits any threat to  
8 injure the person of another made in interstate commerce.

9 Dougherty's second argument appears to be that  
10 his threatening communications were made in self defense  
11 and protected by the Pennsylvania Constitution. I have  
12 addressed this contention on numerous occasions, and I  
13 have explained to Mr. Dougherty many, many times that  
14 Pennsylvania's self defense laws have no application to  
15 this case and do not excuse or justify his threatening  
16 communications to Federal judges. And for those reasons,  
17 I'm going to deny the motion.

18 And Mr. Dougherty, you can take that issue up  
19 on appeal, which I understand you intend to do. So I  
20 formally deny the motion, and I will have that order  
21 docketed shortly.

22 So then, we turn I think to the sentencing.  
23 Are there any other issues we need to address other than  
24 sentencing? Mr. Perri?

25 **MR. PERRI:** Not from us, Your Honor.

1           **THE COURT:** Mr. Dougherty?

2           **THE DEFENDANT:** The habeas ruling I never heard  
3 anything about that.

4           **THE COURT:** That's in the Third Circuit or if  
5 the Third Circuit has not disposed of it, but I don't have  
6 a habeas petition before me.

7           **THE DEFENDANT:** ECF108 and 115 I thought you  
8 were going to issue some sort of ruling related to that.  
9 You indicated numerous times that was preserved for  
10 appeal. I assumed it was being preserved just like a  
11 Rule 29 would be until after trial if there were certain  
12 issues.

13           **THE COURT:** Hold on one second. So I believe  
14 I've adjudicated all motions, including 108. And you  
15 know, frankly, Mr. Dougherty you filed a lot of motions.  
16 But my recollection is I've dealt with 108 on a number of  
17 occasions. You can't have a habeas petition filed in this  
18 Court. You don't even reside in Delaware. Actually, you  
19 weren't held -- well, the habeas petition, to the extent  
20 it existed, should have been brought in the Eastern  
21 District of Pennsylvania where you confined. And I  
22 believe you did bring a habeas petition, right?

23           **THE DEFENDANT:** Again, just to clarify,  
24 according to *Rasul v. Bush* from 2004, that because you  
25 have jurisdiction over the detainers of me, you had

1 subject matter jurisdiction. And that was then resolved  
2 finally in *Boumediene v. Bush*, 2008, the Supreme Court  
3 indicated that because I was detained in FDC Philadelphia,  
4 where you exercise jurisdiction over the facility, you had  
5 to take up the habeas corpus petition because it is a  
6 jurisdictional statute. The fact that you didn't was a  
7 jurisdictional default of the tribunal. And that was  
8 indicated in some subsequent filings that I think it got  
9 missed because as it was going back and forth, it was then  
10 suggested to me to go ahead and file in the Eastern  
11 District.

12 **THE COURT:** Which I think you did in front of  
13 Judge Wolson.

14 **THE DEFENDANT:** And he basically felt that the  
15 only solution was a bail motion back here which had been  
16 pending in ECF108 since March 23. You finally ruled to a  
17 certain degree on that on June 11, 2021. But it never  
18 addressed the ECF issues as part of the other elements  
19 that I outlined if, in fact, as Justice Elido says in his  
20 opinion, if I wanted to challenge the jury instructions  
21 that you had used, I would have had to give you specific  
22 notice as to what objections I was complaining of. And  
23 it's contained in ECF108. You never ruled on that as  
24 being acceptable, deficient in some way or whatever the  
25 case may be. So I assumed you were going to do that as



1 part of the 29 motion.

2 **THE COURT:** Well, I will tell you what, I will  
3 then. To the extent the motion or aspects of the motion  
4 weren't ruled upon, I hereby deny them.

5 **THE DEFENDANT:** If you could just put that note  
6 in the order, then, in fact, it becomes appealable. But  
7 until you put it in the docket, I can't even appeal.

8 **THE COURT:** Well, actually, here's the thing,  
9 you can now -- after today, you get to appeal anything and  
10 everything you want that's been part of this criminal  
11 action. So any filing you've made in the criminal action,  
12 you will be able to appeal.

13 **THE DEFENDANT:** I mean, that just brings us  
14 back to the habeas because that has --

15 **THE COURT:** And so to the extent you filed any  
16 kind of petition, no matter what it is -- hold on a  
17 second.

18 Yeah, I denied -- just for the record, on  
19 October 15, 2020, I denied DI108. That's Docket  
20 Number 145. But here's the thing, the bottom line is to  
21 make it easy for you.

22 When we complete your sentencing, at that point  
23 or shortly thereafter, a judgment will be entered. And  
24 then within 14 days, is that right, within the judgment?  
25 But you should check with Mr. -- I think it's 14 days,

1 right. And I'll confirm that. You will have an  
2 opportunity to file an appeal with the Third Circuit. And  
3 at that point, sir, you can raise any and all issues about  
4 my rulings in this case.

5 **THE DEFENDANT:** I don't mean to be  
6 disrespectful. But my reading of Rule 12(d) indicated that  
7 if you deny 108 on that date that you would outline the  
8 facts that you indicated were being denied and used in  
9 that type of thing. That's what I kept submitting  
10 additional requests for. So is that going to appear  
11 anywhere in the order?

12 **THE COURT:** No. I'm not going to say anything  
13 further about 108.

14 **THE DEFENDANT:** So the habeas, that is actually  
15 jurisdictional. In fact, I am suggesting to you that I,  
16 at your order to go ahead and file in the Eastern District  
17 of Pennsylvania in my subsequent filings. I could  
18 understand why Judge Wolson didn't want to take  
19 responsibility for what I'm now declaring is a default of  
20 jurisdictional concerns, not just a simple Rule 55.

21 **THE COURT:** But you can raise jurisdictional  
22 concerns with the Third Circuit. You have that  
23 opportunity.

24 **THE DEFENDANT:** So then, as far as the habeas  
25 is concerned, you've made no ruling on that or you won't

1 make a ruling on it?

2 **THE COURT:** To the extent you have -- you  
3 believe DI108 is a habeas?

4 **THE DEFENDANT:** No, 115 would be the habeas.

5 **THE COURT:** I have disposed of all motions  
6 pending in this case.

7 **THE DEFENDANT:** Good enough.

8 **THE COURT:** Thank you. All right. And so I do  
9 want to stand corrected. There were apparently two other  
10 items. They were titled motions. And I will deny them.

11 For the record, DI213, which was titled Motion  
12 to Supplement Under 28 U.S.C. Section 2242, and to Set  
13 Aside ECF134 Under Rule 60(b)4 Undecipherable as Invalid.  
14 That's the title of that motion. I hereby deny that.

15 There's DI238, which was titled Motion for  
16 Panel Rehearing or Review, I will similarly deny that.  
17 Okay.

18 **THE DEFENDANT:** That was a courtesy copy for  
19 you.

20 **THE COURT:** That's why I'm saying, so both of  
21 those were courtesy copies.

22 **THE DEFENDANT:** No. The one was specifically  
23 to address the habeas that we were just talking about.

24 **THE COURT:** So that I denied. You can take  
25 that up to the Third Circuit.

1           **THE DEFENDANT:** The other has to do with the  
2 bail motion that we were just referring to that Judge  
3 Wolsen set. They finally sent me an order on it six  
4 months late indicating that it was now moot. And I said,  
5 well, there were issues that avoid the mootness doctrine  
6 because capable of repetition and never getting a ruling  
7 just as we're talking about here now.

8           **THE COURT:** All right. Well, I've done my  
9 best. You can take it up on appeal to the Third Circuit.  
10 All right. So that disposes of all motions. So then, we  
11 should turn to the sentencing.

12           Mr. Dougherty, did you submit anything for me  
13 to consider with respect to sentencing?

14           **THE DEFENDANT:** No, I did not get anything back  
15 on the 29. I thought I would get that first and then I  
16 would submit the recommendation at that point.

17           **THE COURT:** So do you want to submit anything?

18           **THE DEFENDANT:** I, frankly, hadn't read over --  
19 this is the first I'm seeing the recommendation from the  
20 Government. I thought I would get this and then I would  
21 be able to respond to that, but apparently not.

22           **THE COURT:** I want to make sure you have an  
23 opportunity to be heard.

24           **THE DEFENDANT:** Well, then, I need time to  
25 respond to this. I'm just receiving it for the first time

1 today.

2 **THE COURT:** Okay. All right. Mr. Perri?

3 **MR. PERRI:** Judge, I think he did submit a  
4 document where he appears to raise two objections to the  
5 PSR. I'm not sure that was actually filed with ECF. But  
6 I think it was submitted to the Court. And it doesn't  
7 really have a title on it, but there's a date of  
8 February 24, 2022 where -- there is a file stamp on the  
9 front of it. And I know that Mr. Williams addressed those  
10 objections.

11 **THE COURT:** Hold on. I just want to make sure.  
12 Is this DI237 that you are talking about?

13 **MR. PERRI:** Yeah, I don't see the ECF markings  
14 that we typically see. But Mr. Williams did address those  
15 objections.

16 **THE COURT:** Right. So I read the PSR. We will  
17 get to that. But I just want to --

18 **MR. PERRI:** I have an extra copy of it, Judge,  
19 if you would like.

20 **THE COURT:** Sure. You want to send it up.

21 **THE DEFENDANT:** I am saying for the first time  
22 I received United States Sentencing Memorandum. So I  
23 thought I would get this and respond to it.

24 **THE COURT:** And that's fair.

25 Yes. So what you've just handed up, Mr. Perri,

1 I have as DI237.

2 **MR. PERRI:** Under United States, also, we filed  
3 a response to the defendant's objections, which I'm sure  
4 the Court has.

5 **THE DEFENDANT:** I've never seen that.

6 **THE COURT:** Okay.

7 **MR. PERRI:** We sent -- just for the record,  
8 Your Honor, we sent copies of all these things to the  
9 defendant through snail mail, so that he would receive it  
10 at his correctional facility in plenty of time.

11 **THE COURT:** Snail mail is part of the problem.  
12 What do you call snail mail? What does snail mail  
13 actually mean?

14 **MR. PERRI:** As opposed to e-mail, it means it  
15 is not instantaneous.

16 **THE COURT:** Well, that's true. You mean like  
17 the U.S. mail?

18 **MR. PERRI:** Yes, Your Honor. Snail mail is a  
19 very appropriate characterization of that. Okay. I mean,  
20 I don't want to delay things, but I want to make sure that  
21 Mr. Dougherty has a full opportunity to respond.

22 Mr. Dougherty, I'm happy to let you read it  
23 now, the Government papers that you were just provided.  
24 And do you want to look at that and tell me if you -- what  
25 you'd like to do.

1           **THE DEFENDANT:** Again, I continue to see  
2 references about how I am inflexible with, you know, in  
3 terms of accepting this. And I assumed that in the  
4 Rule 29, you ruled on my first amendment argument relative  
5 to the petition cause protecting the transmittal to  
6 justice -- or to the judge -- Chief Judge Conner. And, in  
7 fact, that's --

8           **THE COURT:** Well, so I recall the words -- in  
9 fact, I think you had them quoted petition to redress. I  
10 think it was on the same page as your reference to *Elonis*  
11 is my recollection. Is that right?

12           **THE DEFENDANT:** Again, I'm working off of  
13 memory.

14           **THE COURT:** Well, hold up. Let me just look.

15           **THE DEFENDANT:** But my point --

16           **THE COURT:** Hold on. Give me a second, please.  
17 All right.

18           It's not the same page as *Elonis*. It is the  
19 same page as the self defense argument, so it's Page 12.  
20 And this is where you said, quote, because it was a, in  
21 your quotes, petition for redress, unquote, against the  
22 Pennsylvania corporate entity from the franchise  
23 department was constitutionally protected. So I  
24 interpreted this whole argument as part of your self  
25 defense argument.

1           This is part of the problem we've had  
2 throughout this case. And that's one of the great things  
3 about our system. We have appeal courts, so that you will  
4 be able to make whatever arguments you want to make to an  
5 appeals court.

6           So what I would say is this: To the extent  
7 your, quote, petition for redress argument is something  
8 different than your self defense argument, I would deny  
9 it. Because the bottom line is that there's no state law  
10 exception to the federal criminal laws that prohibit a  
11 person from making threatening communications to federal  
12 judges. And so --

13           **THE DEFENDANT:** Again, I don't want to argue  
14 that. In reference to what you are asking me about this  
15 sentencing memorandum, Paragraph 46 indicates that if you  
16 have accepted responsibility except for the fact that you  
17 have a constitutional challenge, you can still qualify for  
18 the two-point reduction.

19           So my position was it was a petition for  
20 redress. And to do that, under *Gurney*, you had to state a  
21 matter of public concern. And it had to be something that  
22 was sent to whoever the Government official was. That was  
23 the basis of Count 1. I was sending it to the Chief Judge  
24 of the Middle District of Pennsylvania, alleging crimes  
25 being committed by the clerk and the other judges.



1           Now, again, if you would address that in your  
2           order, then I could understand that it's been properly  
3           adjudicated, dismissed or denied.

4           **THE COURT:** Well, I will address it right now  
5           because this came up at your trial, and here's the bottom  
6           line. There's no state law exception.

7           **SPEAKER:** Your Honor --

8           **THE COURT:** Excuse me. Excuse me.

9           There's no state law exception to Section  
10          875(c) or Section 876(c). And you do not have the right,  
11          as aggrieved as you might feel, to put in a,  
12          quote-unquote, petition for redress or any communication  
13          to the chief judge of the Middle District threats. And  
14          that's the problem. You didn't stop with your petition  
15          for redress. You went on to make numerous threats.

16          The jury found them to be threats, and they  
17          found you guilty. And you don't get to qualify for the  
18          two points acceptance responsibility based on the  
19          reservation of preserving your constitutional rights.

20          What that provision in the guidelines is  
21          intended to do is to allow people who want to make a good  
22          faith argument that their fourth amendment rights were  
23          being transgressed by the Government. That they had a  
24          fifth amendment right against self incrimination that had  
25          been ignored. They want to preserve those rights to go up

1 on appeal.

2 But your right that you want to preserve, which  
3 you claim is a first amendment right, you've got that  
4 right, there is no such right that would allow for threats  
5 to be made against a Federal judge.

6 **THE DEFENDANT:** Again, the thing that I have  
7 struggled with in communicating with you all along. That  
8 is nothing in the way of what I put in my Rule 29 motion.

9 First off, I said if it was a third-party  
10 threat, okay, according to *United States v Fenton*, a  
11 24-year-old precedent written by Brooks Smith.

12 **THE COURT:** Before *Elonis*.

13 **THE DEFENDANT:** Before *Elonis*.

14 **THE COURT:** Right.

15 **THE DEFENDANT:** He indicated, citing these very  
16 same 876(c) issues that you couldn't charge someone with  
17 this crime unless there was a demonstration that there was  
18 instruction in it to convey it to the victim or there was  
19 a way that the victim could have become aware of it or  
20 someone who knew the victim could become aware of it that  
21 would fall into the recklessness suggestion that was part  
22 of the ECF argument that you never addressed.

23 But I'm not suggesting that here. I'm saying  
24 here that the -- and it says this in the Rule 29 motion,  
25 that Keith Dougherty is as the petition clause as Westboro

1 Baptist church was to, you know, *Snyder v. Phelps*, which  
2 is the famous first amendment case where you could not say  
3 that something was actionable by the Government because of  
4 the offensive conduct.

5 So again, I'm using a very narrow circumstance  
6 where I took full responsibility for having mailed it to  
7 Chief Judge Conner.

8 **THE COURT:** Let me ask you this, do you take  
9 full responsibility that a person who received that letter  
10 would feel threatened?

11 **THE DEFENDANT:** No. That's the point --

12 **THE COURT:** That's my point. Do you take full  
13 responsibility that when you give a letter to a Federal  
14 agent, a Federal agent charged with protecting the safety  
15 of a Federal judge and you put in the letter a threat to  
16 the Federal judge, do you take responsibility that that  
17 could be forwarded to the judge and could cause that judge  
18 to feel the angst that Chief Judge Conner expressed?

19 That's a yes or no. Do you take responsibility  
20 for that?

21 **THE DEFENDANT:** I take responsibility for the  
22 way you are characterizing it, yes.

23 **THE COURT:** Okay.

24 **THE DEFENDANT:** In other words, I'm  
25 characterizing it differently, and I think that's room for

1 disagreement. Based on that, in other words, I said on  
2 the stand, Yes, I'm the one who wrote this letter. Yes,  
3 I'm the one that mailed this letter. But I am saying to  
4 you that this letter is protected as a petition, and, in  
5 fact, it is not a threat.

6 There are two different circumstances there. I  
7 believe the Brody instruction would have been correct.  
8 You chose not to use that. I also believed that *Elonis*  
9 specifically said you are not allowed to continue to use  
10 the phrase reasonable person. I believe the Supreme Court  
11 upheld that.

12 In a case most recently I think *Boumediene* or  
13 whatever, they specified you could not upgrade someone to  
14 a career criminal sentencing if the standard was  
15 recklessness. You could not use the Armed Career Criminal  
16 Act if, in fact, one of the predicate convictions was  
17 based on recklessness or less. So that was the argument I  
18 was trying to make in ECF108, that this would be that  
19 suggestion that I pointed out.

20 According to Justice Elido, I had to give you  
21 specific instructions of what I would suggest what  
22 recklessness would look like. That's in ECF108. You  
23 never ruled on that.

24 I'm saying you are not allowed to use the  
25 phrase reasonable person in jury instructions at all

1 anymore. That's what I'm suggesting.

2 *Brody* may have been modified to whatever point  
3 that you thought was appropriate. But it does not make  
4 any reference to the phrase reasonable person. And *Brody*  
5 also includes the subjective element right in the jury  
6 instructions so the jury doesn't become confused, as  
7 Mr. Perri would say.

8 So I'm simply saying when it came to the  
9 two-point reduction for taking responsibility, I did take  
10 responsibility. And the arguments are that: One, I do  
11 not believe that the communication was threatening to  
12 Chief Conner because he said under oath, he did not  
13 perceive it as a judge. He was only acting in an  
14 executive capacity in any of my cases, that all of them  
15 were transferred. And he didn't understand why that would  
16 be addressed to him. And again, I was using it as a  
17 rhetorical device.

18 But none of it was directed at him. It was  
19 directed at 39 unnamed judges in various circumstances to  
20 make my point. But that again, could be clarified as  
21 being offensive. Well, that was the statement raised in  
22 the *Westboro Baptist Church* case. They said although the  
23 language used by them was vulgar and offensive, it  
24 couldn't be actionable, and therefor the case was reversed  
25 on those bases.

1           So I'm saying that is the argument I intend to  
2 present in the Third Circuit relative to my communication  
3 to Judge Conner. And I specifically took responsibility  
4 for sending it, writing it. There was no proof there, and  
5 I didn't object to it. When, in fact, under  
6 cross-examination, I said it was not a joke. It was not a  
7 lark. It was made for specific purpose, that was to  
8 address a matter of public concern that, in fact, I  
9 believe the clerks are committing crimes. And, in fact,  
10 no one is supervising them. And Judge Conner did testify  
11 under oath he believed they supervised themselves. So all  
12 of that was part of the record.

13           The other two counts, that are Count 2 and 4, I  
14 specifically indicated that they were sent to individuals  
15 in a confidential communication, and, in fact, it is a  
16 state crime, criminal coercion 18 PACS 2906 to take that  
17 information and forward it. No different than when  
18 Attorney General Cane was indicted for releasing  
19 confidential grand jury information where she was  
20 impeached, indicted, convicted, and removed.

21           That is the way I look at the concept of taking  
22 that information in their official capacity. And rather  
23 than doing their jobs as state officials, have taken this  
24 information to a grand jury to use that information  
25 against me.

1           Counts 1 and 2 of the State statute says if you  
2           use confidential information in that manner, you've  
3           committed a Federal crime. But part of my defense is that  
4           once I had moved for default in the case against the  
5           corporate fed income tax department, and in the case of --  
6           one of the cases involving Judge Conner, Carroll Tire  
7           Company, it is a crime for the clerk not to enter default,  
8           and therefore, any effort to transfer and delay the  
9           commerce is covered fully in *Ocasio v. United States*,  
10          citing evidence.

11           And evidence was very clear that it's a common  
12          law status -- statute that indicated a Government  
13          official, acting outside of their official authority, is  
14          guilty of extortion. And they don't even have to make a  
15          demand for that regard. You're acting like I'm simply  
16          saying this is a state self defense issue, when, in fact,  
17          I repeatedly said *Heller* -- *DC v. Heller* was the cite on  
18          self defense. And that's a Federal right, because under  
19          the ninth amendment, it preexisted the 1789 Constitution.

20           So I'm not simply arguing with the State. I am  
21          simply saying that self defense existed before the  
22          Constitution did, and, therefore, it's protected by the  
23          ninth amendment. That's how *Heller* was decided. But the  
24          two-point issue relative to the sentencing that we're  
25          talking about was based on the fact that I am preserving

1 this while taking full responsibility for the facts that  
2 you have alleged that I mailed it, I wrote it, it wasn't a  
3 joke, wasn't hyperbole.

4 It is a challenge to the petition for redress  
5 relative to the fact that there seems to be no one  
6 supervising the chief clerk of the District Court in any  
7 of these circumstances. And the argument it has in it,  
8 the *Lucia* verses *SEC* argument, where since 1933,  
9 administrative law judges for the SEC have been appointed  
10 in violation of the appointments clause. And that the  
11 amicus and the petitioner presented to the Court an  
12 argument that anytime a Federal employee has the power to  
13 bind the United States or third parties in their own name,  
14 they are an inferior constitutional officer and they have  
15 to be appointed under the appointments clause.

16 My position is, I'm stating it here, I guess,  
17 because there's no other way to convey it. Rule 55(a) and  
18 (b) are given authority from the Supreme Court to the  
19 chief clerk of the District Court to enter default against  
20 the United States and against third parties in limited  
21 circumstances.

22 As such, they cannot be employees of the  
23 District; they must be employees of the Supreme Court.  
24 That was the remedy that was employed in *Lucia v. SEC*.  
25 And there is an incentive in Footnote 5 in the opinions



1 saying when someone such as myself reserves such an  
2 argument, they are entitled to a new judge and a new  
3 trial.

4 **THE COURT:** All right. Mr. Dougherty, did  
5 you -- do you admit that you intended the communications  
6 to be a threat?

7 **THE DEFENDANT:** Not a threat, no.

8 **THE COURT:** Okay --

9 **THE DEFENDANT:** -- Government purposes.

10 **THE COURT:** That's what I asked. Do you admit  
11 that you knew that the communications would be viewed as a  
12 threat?

13 **THE DEFENDANT:** No.

14 **THE COURT:** Okay. Thank you.

15 **THE DEFENDANT:** It was confidential, and it  
16 could not be used for anything other than official  
17 purposes. No different than doing an investigation and --  
18 you know.

19 **THE COURT:** Okay. All right. Thank you. All  
20 right. Now, you have expressed that's why you are  
21 objecting to the two level or the failure of the report to  
22 give you a two level acceptance responsibility reduction.  
23 All right.

24 You also object to the victim related  
25 adjustment, correct?

1           **THE DEFENDANT:** Yes, he admitted he wasn't a  
2 victim.

3           **THE COURT:** Right. I've read that. All right.  
4 Now, is there -- you've now had an opportunity  
5 to read the Government's filings; is that right?

6           **THE DEFENDANT:** Pretty much, yes.

7           **THE COURT:** Okay. And I've reviewed your  
8 filings, in particular your filing 237, which we  
9 discussed, in which you do articulate the objections to  
10 the victim related adjustment, which is discussed at  
11 Paragraph 51 of the presentence report, and also the  
12 acceptance responsibility of the fact you didn't get it,  
13 which is at Paragraph 56. All right.

14           Are there any other materials I should have  
15 reviewed in connection with your sentencing. I reviewed  
16 the PSR. I reviewed the government's memo. I reviewed  
17 your filings. I've listened to you today.

18           Is there anything else that I should have  
19 considered?

20           **THE DEFENDANT:** As far as I know, That would be  
21 it.

22           **THE COURT:** Mr. Perri, is there anything else  
23 that I should have considered?

24           **MR. PERRI:** I would just note for the record,  
25 Your Honor, that the sentencing memorandum that the United

1 States filed and that the defendant apparently did not get  
2 a copy of, it's only two pages.

3 **THE COURT:** Right. To his credit, he just said  
4 he had a chance to review it.

5 **MR. PERRI:** I think that document Number 240  
6 was a reply to the United States response to the  
7 defendant's Rule 29 and Rule 33 motions, that's at least  
8 as best I can tell. It's very lengthy, a 51-page  
9 document. That's 240, Your Honor, just in case you wanted  
10 to mention that.

11 **THE COURT:** I have reviewed all filings. So  
12 let me issue some rulings on the objections. So let's  
13 start with the two-point reduction that was denied to you  
14 for acceptance of responsibility in Paragraph 56. I'm  
15 going to overrule your objection.

16 And to cut to the chase, in order for this  
17 two-level reduction to be awarded to somebody who wants to  
18 stand up for constitutional arguments, you still have to  
19 admit to all the elements of the offense. And you have  
20 not.

21 Because one of the elements of the offense  
22 under *Elonis* is that the defendant either intended the  
23 communication to be a threat or had knowledge that it  
24 would be viewed as a threat. And as you just acknowledged  
25 within the last five minutes, you don't admit to those two

1 things, to either of those two things. Therefore, you  
2 don't accept responsibility of the offense. And so for  
3 that reason, I agree with the probation officer's  
4 Guideline calculation and his decision to deny you  
5 acceptance of responsibility.

6 Then we turn to the -- and by the way, so then,  
7 what you did was the Government had to go forward at trial  
8 and prove your subjective intent, your mens rea. And I  
9 also would note that I found persuasive in this regard the  
10 *United States against New York City* at 177 Fed. App. 235  
11 239.

12 And in that case, the defendant, like you,  
13 claimed entitlement for accepting responsibility. And  
14 despite having gone to trial, because in that case he did  
15 not deny essential elements of the crimes charged. And  
16 here you do, you do deny essential elements of the crimes  
17 charged. And so that put the Government to its burden of  
18 proof what is a factual element beyond a reasonable doubt.  
19 So it's not a legal issue; it's a factual issue.

20 So then, we turn to the -- no, let's wait.  
21 Let's turn to the adjustment for official victims. And  
22 here, the probation officer, following USSG Section  
23 3A1.2(b), applied six-level enhancement because the victim  
24 was a Government officer or employee. And basically the  
25 defendant's objection is that the victims were, quote,

1 engaged in crimes, unquote.

2 And he also takes issue with the status of  
3 Chief Judge Conner playing an administrative role. And  
4 that administrative role is, in fact, still a judicial  
5 role. And he was at all times a Federal District Court  
6 judge. And the same applies to Judge Conti. She was at  
7 all times here a judicial officer of the United States.  
8 They were acting within their constitutional authority to  
9 fulfill their responsibilities as federal judges.

10 And I think the trial testimony just showed  
11 beyond doubt that the offenses were motivated by their  
12 status as federal judges. So I think the six level  
13 enhancement is appropriate.

14 So the base offense level is a 12 under section  
15 2A6.1. And then there were more than two threats;  
16 therefore, two level enhancement is applied pursuant to  
17 section 2A6.1B2.

18 And then the six-level enhancement under  
19 Section 3A1.2(b) that we discussed because of the status  
20 of the victims. And then that leaves us with adjusted  
21 offense level of 20. And because as I've ruled, the  
22 presentence report is correct in my view that acceptance  
23 of responsibility is not warranted. That leaves a total  
24 offense level of 20.

25 The defendant does not have any criminal

1 history points, so he's criminal history category one.  
2 And that leaves a Guideline range of 33-to-41 months. All  
3 right.

4 Are there any motions for departure from the  
5 Government?

6 **MR. PERRI:** No, Your Honor.

7 **THE COURT:** From defendant?

8 **THE DEFENDANT:** Again, just in response what I  
9 heard from Mr. Perri about the lengthy reply brief, I  
10 assume that was incorporated in your denial of the 29 and  
11 33. So I was just kind of surprised that he brought that  
12 up now. But that specifically indicates that under no  
13 circumstances have I ever implied or suggested that any  
14 judge acting with tribunal jurisdiction can be threatened  
15 or harmed in any way, but rather the accusation which will  
16 be brought up in the appeal, is that when a judge acts  
17 without tribunal jurisdiction, they are equivalent to a  
18 private citizen, no different than if --

19 **THE COURT:** Right. I totally get that. And  
20 just for the record, what you really mean, whether you  
21 intended it or not, I can't get inside your head, though,  
22 that is when the judge doesn't do what you think the judge  
23 should do, the judge is acting outside his or her tribunal  
24 jurisdiction. And then in your view of the world, is game  
25 to be threatened.

1           **THE DEFENDANT:** Give me leeway here. I never  
2 suggested that. If you had ruled on ECF that, you know,  
3 before the Court is this and I denied it, then you are  
4 acting within your tribunal jurisdiction. However, this  
5 the argument that will be brought out fuller. And I  
6 cannot believe that we haven't resolved it yet.

7           That once a defendant -- a plaintiff, pardon  
8 me, properly moves for default in a civil manner, that  
9 strips the District Court judge of any tribunal  
10 jurisdiction until one of two possible events, one either  
11 the defendant files an acceptable pleading to the Court, a  
12 Rule 55(c) motion, or the plaintiff waives the right to  
13 win by default judgment.

14           Otherwise, you understand Rule 55(b) is  
15 superfluous. There is no reason to have it. A default  
16 judgment by the clerk has no meaning because at any point,  
17 a District Court judge can ignore its limitations and turn  
18 around and start issuing show cause or do other things in  
19 the case because they don't want the plaintiff to win by  
20 default.

21           **THE COURT:** You know, here's the thing. I have  
22 to tell you, you might be right.

23           **THE DEFENDANT:** That's what I'm saying.  
24 There's no animus.

25           **THE COURT:** You might be right. And when you

1 say "there's no animus," the problem is that you then  
2 wrote letters, which were threatening. And I got to tell  
3 you, I'm kind of getting ahead of myself because we're  
4 getting to -- throughout this case. I've been presiding  
5 over this case for years. And Mr. Perri didn't join the  
6 case until -- when did you join the case, Mr. Perri? It  
7 was relatively recently.

8 **MR. PERRI:** I think it was --

9 **THE DEFENDANT:** May 21st.

10 **THE COURT:** My point is that -- the reason why  
11 I was getting to this is until we got to trial, I had not  
12 read the threatening communication in its entirety. And,  
13 I can't tell you how distressing and disturbing it was to  
14 have Chief Judge Conner walk through in response to  
15 questions from the prosecutors, the line by line of the  
16 letter. That jury did not take long to reach its verdict,  
17 and I'm not surprised. Because when you read that letter,  
18 it's frightening.

19 So you say you have no animus. A judge can  
20 never read the heart of a person definitively. You can  
21 only discern intent by making inferences. And we're not  
22 truth sayers. So words matter, actions matter. And it's  
23 from those things that judges and juries infer intent.

24 So you say here you don't have animus, but that  
25 letter conveyed animus. I don't think it's even a close



1 call.

2           You are at times very respectful to me. I feel  
3 bad for you, frankly, at times. And I try to see good in  
4 everybody, but you can't write a letter like that. And  
5 the words convey animus. They convey hate, and they are  
6 scary.

7           And we can't live in a country where our judges  
8 have to worry that because they rule on a default judgment  
9 in a civil case in a way that the plaintiff doesn't like,  
10 they're going to be subjected to threats. The  
11 constitutional government will not work if that's allowed  
12 to go unpunished.

13           **THE DEFENDANT:** My position would be simply, if  
14 a judge acts without constitutional authority, they are no  
15 different than any other thief or criminal coconspirator.

16           **THE COURT:** Right. And I get your point.

17           **THE DEFENDANT:** That's what *Ocasio* says.

18           **THE COURT:** And that's what you say.

19           **THE DEFENDANT:** You can abuse your --

20           **THE COURT:** You will get your final elocution.  
21 If you want to expand on that point, you can. You have  
22 expounded for hours since this case was begun on that  
23 point.

24           All right. Are there any motions for  
25 departure?

1                   **THE DEFENDANT:** That's it, yes.

2                   **THE COURT:** So then, we have essentially if  
3 there's a motion for a variance or for whatever the  
4 sentence -- and I will just put them together. So there  
5 being no other objections to the presentence report, I  
6 will adopt the findings of fact and conclusions of law of  
7 the presentence report.

8                   Are there any victims present, Mr. Perri?

9                   **MR. PERRI:** No, Your Honor. They were  
10 consulted and any statement that they may have made were  
11 included in the PSR.

12                  **THE COURT:** I have read the one statement from  
13 Chief Judge Conner.

14                  All right. So Mr. Perri, do you wish to make  
15 argument for sentencing? I read the Government  
16 submissions.

17                  **MR. PERRI:** Your Honor, we would just reiterate  
18 what we indicated in the memorandum. Perhaps the most  
19 shocking thing about this case is that the defendant, even  
20 though it's been made clear to him a hundred times a  
21 hundred different ways that what he did was wrong, it was  
22 frightening, it was unacceptable, it was against the law,  
23 he continues to claim that what he did was justified as if  
24 tomorrow he would do it again. That, to us, is  
25 astonishing.

1           And although I see indications that, you know,  
2 perhaps, there is some good in Mr. Dougherty, I think the  
3 fact that he is unwilling to see that he did something  
4 wrong arguably makes him at higher risk to do it again.  
5 That's where we are coming from, Your Honor.

6           And even in his most recent filing, which was  
7 filed March 18 of this year, that's Document Number 240,  
8 he continues to use worrisome language, disrespectful  
9 language that seems to come from a place of anger and  
10 frustration. And he is, again, claiming that the judges  
11 were engaged in crimes. He says it over and over again.  
12 And he writes it over and over again. And he just won't  
13 hear anything different.

14           And to say that they engaged in the crime of  
15 delaying his commerce, well, how absurd is that when  
16 you -- let me get this straight. Anytime a civil litigant  
17 loses a case in civil court, that ruling is necessarily  
18 going to affect his business. And it's going to, even by  
19 the defendant's phrasing, delay his commerce, necessarily.  
20 Is it then true that the litigant gets to say, Judge, you  
21 committed a crime. And if I asked the militia to shoot  
22 you in the head, you deserve it. And if you don't change  
23 your ruling, that's what's going to happen. That is  
24 absolutely absurdity.

25           The defendant, he's a very smart man, he's a

1 very smart man. The fact that he can't see that, it's  
2 worrisome to us, Your Honor. And so we would stand on the  
3 position expressed in our memorandum. Thank you.

4 **THE COURT:** Which is, really, it's toward the  
5 high end of the Guideline. It's nothing particular,  
6 right? I'm not asking for anything more. I just want to  
7 make sure that's what I understood.

8 **MR. PERRI:** We would ask for the high end.  
9 Thank you, Your Honor.

10 **THE COURT:** All right. Mr. Dougherty, this is  
11 your last chance in front of me, at least, to --

12 **THE DEFENDANT:** I'm very grateful for  
13 Mr. Perri's characterization that he just put forth.  
14 That's the closest thing that I've seen to an honest  
15 assessment of my argument thus far. Let me just clarify  
16 once again.

17 If we were to get a ruling from the Third  
18 Circuit that, in fact, the doctrine that is now Supreme  
19 Court super precedent is no longer valid in the Third  
20 Circuit, that would be something that then could be  
21 finally resolved by the Supreme Court.

22 But what happens in a circumstance such as this  
23 is a denial of any due process. And you have heard me say  
24 this over and over again, *Marshall v. Jerrico* then  
25 *Sebelius v. Auburn Regional*. Very simply, what it says is

1 that there is a difference between mandatory claims  
2 processing rules and normal claims processing rules. In  
3 fact, there is a difference between jurisdiction.

4 And the thing that the Third Circuit has  
5 struggled with, and I cited where they have been reversed  
6 time and time again -- they are going to come to the  
7 realization at some point that I'm not exaggerating. I'm,  
8 in fact, right as you postulated might be a mere  
9 possibility that when someone moves in a civil pleading  
10 for a default, it means the defendant has simply waived  
11 Rule 12(b)2 through 12(b)5, no harm done to anyone. But  
12 it moves to a final resolution on the merits.

13 But what's happened here is I have been  
14 identified as a vexatious person and therefore, none of my  
15 cases will ever come to a decision on the merits. We've  
16 basically said that you are -- Keith Dougherty is a victim  
17 of a judicial detainer. And the question will be  
18 resolved, I believe, when the Court finally admits that  
19 Singral, Inc. is actually a crime of extortion as  
20 identified in *Ocasio v. U.S.*

21 Very simply, it says if a Government official  
22 tells a business owner, such as myself, you must do  
23 business with a friend of mine, it is in evidence, it's  
24 clearly established in the opinion, the rough equivalent  
25 of extorting a third-party bribe. Now, he doesn't want to

1 accept that, I can understand, that to be forced to hire  
2 an attorney as a business owner is a crime would be  
3 apparently disappointing.

4 There is a reference to the *Horn* case in the  
5 threat letter was about when the Supreme Court indicating  
6 that when Government acts as a federal agency or otherwise  
7 to appropriate something, it is subjectable to the just  
8 compensation clause even if it is personal property.  
9 There it was raisins. They explained a patent could be  
10 infringed in the same way.

11 So if you were a business owner, you couldn't  
12 be forced to give a certain amount of offices to a vendor,  
13 for instance, they used in the example, and not receive  
14 compensation. So I said all along, all you have to do is  
15 let it go to the merits and make a decision on these  
16 things. But, in fact, you had to do it with tribunal  
17 jurisdiction.

18 **THE COURT:** Let me ask you this, because this  
19 is your opportunity at sentencing. You've made all these  
20 legal arguments. Is there any --

21 **THE DEFENDANT:** But I never had an opportunity  
22 to address them as Mr. Perri just --

23 **THE COURT:** All right.

24 **THE DEFENDANT:** I'm suggesting that I'm not  
25 creating some wild notion about crimes. I'm simply saying

1 that it would be resolved if Singral, Inc. were resolved  
2 on the merits to be a violation of *Ocasio*, and *Evans* is  
3 fully supportive.

4 And at some point, this could have been  
5 resolved by decision on the merits, instead of the  
6 constant reference to you need to hire an attorney.

7 And in fact, you were insistent throughout the  
8 process what I should allow Mr. Young. And I said, well,  
9 that would be counter to the argument that I have been  
10 trying to get before the Court now for over 11 years that,  
11 in fact, you can't force me to hire or do business with a  
12 third person. That's all this is about.

13 If you cannot force a citizen to buy health  
14 insurance under the Affordable Care Act, you can't force a  
15 business owner to hire an attorney or do business with an  
16 attorney.

17 It wasn't until 2016 that the Supreme Court of  
18 the United States, somewhat addressing my argument said,  
19 if you as a Government official say, whether it be a  
20 clerk, magistrate or a judge to a business owner, you  
21 can't appear on behalf of your contract to collect money  
22 that's owed to you unless you pay a third-party bride to  
23 an American Bar Association member, that's a crime.

24 Now, once that's ruled on, all of this is  
25 resolved. You could not convict me for saying it, and I'm

1 just trying to enforce my property rights that happen to  
2 be available to me under the Fifth Amendment of the Just  
3 Compensation Clause.

4 You could buy my company from me, but you can't  
5 seize my contracts because you would rather see an  
6 attorney get 30 or 40 percent of them. That's what this  
7 is all about.

8 **THE COURT:** Okay.

9 **THE DEFENDANT:** And that's all it was. It  
10 never was that I disagreed with a ruling on the merits. I  
11 disagreed with the fact that once default was entered or  
12 it was sought, it is a crime if the District Court clerk  
13 will not enter the default. So I said who enforces this  
14 law? That's been the question. If someone enforced it,  
15 this would be over.

16 **THE COURT:** Would you like to say anything else  
17 about anything other than that that I should consider?

18 **THE DEFENDANT:** Again, if these things are true  
19 then, in fact, this could not be a crime. It's that  
20 simple.

21 **THE COURT:** Okay. All right. Under the law,  
22 the sentence that I'm supposed to impose is to be  
23 sufficient but not greater than necessary to achieve the  
24 purposes of sentencing. And Congress has said that there  
25 are a number of purposes to sentencing. So one thing is



1 to provide for a sentence that reflects the seriousness of  
2 the offense, the nature of the offense, and we have a very  
3 serious offense here.

4           You like to refer to the Constitution. We live  
5 in a country that really was created out of an idea or  
6 ideas that -- ideas that were first really articulated in  
7 the Declaration of Independence, but that were implemented  
8 pursuant to the Constitution. And the Constitution  
9 creates a tripartite government, and one of the branches  
10 of the government is the judiciary. And for the  
11 Constitution to work, for our country to endure, we have  
12 to have judges that are fair and impartial, that interpret  
13 the law, and do that to the best of their ability. No  
14 human is perfect, judges can make mistakes.

15           But we wouldn't have a constitutional  
16 Government survive if every time a judge was thought to  
17 make a mistake, the judge could be threatened or  
18 intimidated or harmed. And we can't have a government  
19 function if judges have to rule out of fear that they will  
20 be threatened or harmed based on the substance of their  
21 rulings.

22           So Congress passed specific statutes to make  
23 sure that people who felt that they were entitled, or  
24 otherwise, to threaten public officials, in this case  
25 particularly judges, would pay a price. These are were

1 very, very serious offenses. They go to the integrity of  
2 the government, the functioning of the government. So  
3 they are very serious offenses.

4 Another purpose of sentencing is to consider  
5 the nature of the defendant. We start with the  
6 guidelines. The guidelines are there to try to achieve  
7 uniformity. We treat like defendants the same. So I  
8 start with the guidelines here, this range of 33-to-41  
9 months.

10 You didn't say anything, Mr. Dougherty, today  
11 about your history, about your family. At times I've  
12 tried to question you about them during the course of bail  
13 proceedings, for instance.

14 I did read the presentence report. The  
15 presentence officer spoke with your daughter. She had  
16 very nice things to say about you. I read about your  
17 upbringing. One of the sad aspects of the case is that  
18 you had this family, you apparently practice your  
19 religion. I don't know.

20 And it's hard in ways to reconcile what you  
21 read about your upbringing, your daughter's relationship  
22 with you, with the threats that are in the letter. You  
23 don't have any criminal history. I guess you had the one  
24 DUI many, many years ago. But as I understand it, you  
25 don't drink anymore.

1           So I have factored into my decision making your  
2 personal history. Another purpose of sentencing is  
3 deterrence. And to some extent, that's related to the  
4 seriousness of the offense. There's two types of  
5 deterrence. There's general deterrents, and there's  
6 specific deterrence. And general deterrence, as I say,  
7 there's some overlap between that and the seriousness of  
8 the offense.

9           I think I have no choice but to make sure that  
10 people understand generally that they can't threaten  
11 judges. So that calls for a significant sentence.  
12 Specific deterrence is a curious thing in this case. I  
13 think Mr. Perri is right. I think I could probably give  
14 you 100 years, and I don't think you would come off of  
15 your position, if you will.

16           Do you recall where you had an interchange  
17 once, and I told the Government they couldn't use it  
18 against you. I asked you questions about how is it going  
19 in prison? And you made a comment to me to the effect  
20 that it wouldn't be that different to be on the outside.

21           Do you recall that conversation?

22           **THE DEFENDANT:** I believe you were asking me  
23 about why I wouldn't take the plea deal that was being  
24 offered.

25           **THE COURT:** No, no. I put all that aside, just

1 kind of at the end of one of our hearings. And I just  
2 said how is it going? Obviously, it had to be tough  
3 during Covid. And I was trying to see if it would be  
4 possible for you to get released to a third-party  
5 custodian.

6 Do you recall that?

7 And I asked, I said what is it like with the  
8 food and all that? You made a comment, to the best of my  
9 recollection, that it wasn't like you were looking forward  
10 to going on the outside that there was that much to be  
11 offered.

12 Do you remember that at all?

13 **THE DEFENDANT:** Well, again, the context of it  
14 was you had brought up on your own that you were going to  
15 release me pending trial because of the plea deal that had  
16 been offered, where I could sign and walk out the door and  
17 continue my appeal for time served. That was the basis of  
18 it.

19 And the issue is I am looking forward to having  
20 a finalization that we can rely on. Fifty-five is either  
21 a law that's going to be enforced or not, and we should  
22 close the book on any further discussion of it.

23 But to -- if, in fact, this is what I had to do  
24 to get to a point where I'm finally going to get an answer  
25 on this particular subject, then apparently that is in my

1 life God's will.

2 So, but to turn around and say that I would be  
3 willing to take a deal where I signed and I walked out the  
4 door, time served, guaranteed, and continue the appeal  
5 into the circuit relative to ECF108 and 115, I was fearful  
6 that it would be given the same dismissive --

7 **THE COURT:** I've got your legal argument. I  
8 remember the legal argument, and I respect the legal  
9 argument.

10 And the way I would phrase it is you realize  
11 that if you accepted the plea, then if you went up on  
12 appeal, the Government would argue that they had  
13 sufficient evidence for a jury to find you guilty and  
14 sufficient evidence to justify the plea. And therefore,  
15 you essentially didn't get to make your appeal to the  
16 jury, and ultimately to the Third Circuit. That was  
17 your --

18 **THE DEFENDANT:** In other words, the deal was I  
19 would be able to continue the appeal on ECF108, that you  
20 had not ruled on, and ECF115 habeas corpus, where, in  
21 fact, someone was implying you could suspend habeas corpus  
22 in the Third Circuit.

23 And I said those two things are too important  
24 to simply say as a matter of convenience, I could walk out  
25 guaranteed 12 months time served and continue the appeal

1 if, in fact, we were going to have a situation that  
2 occurred where we could dismiss it under a local  
3 procedure, nothing to see here, move along. That's what  
4 was my motivation.

5 **THE COURT:** Okay. Well, so I factored into my  
6 sentence your personal history. I factored into it that  
7 you have been respectful at times and civil in front of  
8 me. And again, that's hard to reconcile with the letter,  
9 in particular. I'm not singling out the letter to Conner.  
10 You made reference to Judge Conti as well.

11 And I just find it very difficult, as I say, to  
12 solve this puzzle to figure out why at times you can be  
13 very civil and respectful and then yet you can write real  
14 vile things, as I say I've already articulated that  
15 earlier in the hearing, scary things. And you can't seem  
16 to come to any resolution of that.

17 **THE DEFENDANT:** Trying to get a final answer  
18 here.

19 **THE COURT:** That's your position. Your  
20 position is you are trying to get a final answer.

21 **THE DEFENDANT:** If, in fact, we got the final  
22 answer.

23 **THE COURT:** I let you speak. I need to put on  
24 the record why I'm going to do what I'm going to do. And  
25 I think it's a sad day. It's a sad day that you can't

1 reconcile your desire for a final legal answer with an  
2 appreciation for what it means to put threats on paper and  
3 to deliver them to Federal agents.

4 And the only inference you can draw is that the  
5 federal agents, themselves, would have to take immediate  
6 action. And that the Federal agents would be concerned  
7 about the threatening nature of the communication. And  
8 that that would be imparted to the judge, as it was,  
9 judges. And we heard from one of them just how disruptive  
10 it was to the court system in Harrisburg and to the judge,  
11 and how concerning it was to the judge.

12 And I feel that I really have no choice but to  
13 give you the top of the guideline range because you won't  
14 recognize anything. You just refuse to appreciate the  
15 consequences of your actions.

16 The judicial system is not perfect. It can't  
17 be because it's run by humans. There's going to be  
18 mistakes. And we can't have disgruntled litigants think  
19 it's okay to threaten the judges or the clerks, lawyers in  
20 the system just because the litigant doesn't get the  
21 result the litigant thought it was entitled to.

22 So I think it's incumbent upon me I feel it's  
23 the most just punishment in this case to give you the top  
24 of the guideline range.

25 I hope that at some point, you could step back,

1 Mr. Dougherty, and appreciate that your words bring harm.  
2 That you ought to be careful about what words you choose.  
3 I hope it because I've seen some good in you, respect at  
4 times, and I've read some good things about you in the  
5 presentence report. From your daughter, in particular.

6 So there is a small part of me that, you know,  
7 hopes with realism that that could be achieved. But I  
8 have to agree with Mr. Perri, your actions to date made  
9 that hope just appear very, very slim, but I'm going to  
10 hold onto it.

11 And I say that because after you serve your  
12 term, you will be put on supervised release for a period  
13 of three years. And there will be conditions for you to  
14 abide by. And I can't stress enough how important it is  
15 that you abide by the conditions. All right. So this is  
16 the sentence that I'm going to impose.

17 Pursuant to the Sentencing Reform Act of 1984,  
18 it is the judgment of the Court that the defendant Keith  
19 Thomas Dougherty is hereby committed to the custody of the  
20 Bureau of Prisons, to be imprisoned for a total term of 41  
21 months for Counts 1, 2 and 4 served concurrently. The  
22 Court has considered all the factors set forth under 18  
23 U.S.C. Section 3543(a) and finds the sentence to be  
24 reasonable and appropriate.

25 Upon release from prison, you shall be placed



1 on supervised release for a term of 36 months on Counts 1,  
2 2 and 4 to be served concurrently. Within 72 hours of  
3 release from the custody of the Bureau of Prisons, you  
4 should report in person to the Probation Office in the  
5 district to which you are released.

6 While on supervised release, you should not  
7 commit another federal, state or local crime. You should  
8 comply with the standard conditions that have been adopted  
9 by this Court. And you shall comply with the mandatory  
10 and special conditions listed in paragraphs of the  
11 Presentence Investigation Report.

12 It is further ordered you shall pay the United  
13 States a special assessment of \$300 due immediately. The  
14 Court finds you do not have the ability to pay the fine,  
15 the Court will waive the fine in this case.

16 It is the order of the Court that the sentence  
17 be imposed as just stated. The clerk's office shall  
18 prepare the judgment. My deputy clerk shall enter  
19 judgment of conviction. It is ordered that a complete  
20 corrective copy of the presentence report be prepared for  
21 the Bureau of Prisons and the U.S. Sentencing Commission.  
22 Any other copies of the presentence report shall remain  
23 confidential.

24 You have the right, Mr. Dougherty, to appeal  
25 within 14 days after entry of the judgment of conviction.

1 I would recommend that you discuss your right to appeal  
2 with counsel. If you cannot afford the cost of an appeal,  
3 you may file a request for permission to file that appeal  
4 without paying those costs. If there is an appeal, and  
5 you have counsel, counsel on appeal will be permitted  
6 access to the presentence report, except that any  
7 recommendations from the probation office are not to be  
8 disclosed to counsel.

9 Any other matters, Mr. Perri?

10 **MR. PERRI:** Nothing, Your Honor.

11 **THE COURT:** Anything else, Mr. Dougherty?

12 **THE DEFENDANT:** No.

13 **THE COURT:** Good luck. Court adjourned.

14  
15 (The proceedings concluded at 1:21 p.m.)  
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CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Bonnie R. Archer  
Bonnie R. Archer  
Official Court Reporter  
U.S. District Court